

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
LOIS BOHOVESKY, individually and as the next best
Friend of the Deceased PAULA BOHOVESKY

Petitioner-Plaintiff,

-against-

AFFIDAVIT
Index No.

THE COMMUNITY SUPERVISION PROGRAM
SERVICES in Peekskill for the Department of Corrections
and THE NEW YORK STATE PAROLE
BOARD,

Respondents-Defendants.

-----X

LOIS BOHOVESKY, being duly sworn, deposes and states under the
penalty of perjury as follows:

(1) Your Deponent is the Mother of my deceased daughter, Paula
Bohovesky ("Paula"). I make this Affidavit upon personal knowledge.

(2) My physical and psychological strength is waning as the years pass,
but more substantially as the reality of one of Paula's murderers, Richard
LaBarbera ("Paula's killer") being released from Prison any day comes closer to a
harsh reality.

(3) In the interests of me not having to again relive the many impacts
of Paula's murder, I respectfully ask this Court to review the Affidavits of John
Murphy and Robert Baird who have honestly and accurately described my past

and present situation. I respectfully adopt those Affidavits as mine before this Court.

(4) With the release of Paula's killer just a few days away, I have tried to find out details about where Paula's killer will be residing and as set forth in the Affirmation of one of my Pro Bono Attorneys, Dennis Lynch, I know nothing except the Parole Office will be in Peekskill, New York. That is too close for me to bear even at this date. The memory of Paula's murder is always with me even now.

(5) Until this Court can hear the full merits of this case, I ask that this Court Order that Paula's killer not reside, nor report to a Parole Office less than five counties away from my residence for the first five years of his release. That would be to protect me since Paula's killer murdered my daughter while he was out on Parole from another crime he committed. Following his Parole Restrictions did not stop Paula's killer from breaking Parole and killing my daughter.

(6) I thank this Court for its sincere consideration of my request and this application to the Court. Due to my age it may be difficult at times for me to be in Court at all times, but this Court should know how deeply I am concerned about what this Court case seeks to accomplish and it is my hope this Court understands.

WHEREFORE, your Deponent respectfully asks the relief sought in
this Affidavit and my Court application be granted by this respected Court.

LOIS BOHOVESKY

Sworn to before me on this
1st day of July 2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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LOIS BOHOVESKY, individually and as the next best
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THE COMMUNITY SUPERVISION PROGRAM
SERVICES in Peekskill for the Department of Corrections
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ROBERT BAIRD, being duly sworn, deposes and states under the penalty
of perjury as follows:

(1) Your Deponent has extensive experience in journalism and the accurate
reporting of events, including criminal investigations, trials and convictions.

(2) This Affidavit is made upon personal knowledge acquired during the
investigation, trial, conviction and subsequent events surrounding the two vicious
murderers of the late Paula Bohovesky ("Paula").

(3) I have spent considerable time also speaking with and understanding
more events and information from the Petitioner, Lois Bohovesky ("Lois" or
"Mrs. Bohovesky") whose daughter is the late Paula Bohovesky.

BACKGROUND OF THIS COURT APPLICATION

(4) Since her daughter's killers were sentenced to 25 years to life in prison, Lois Bohovesky has battled three great fears and now, at the hands of the Respondents-Defendants ("Defendants"), one of those fears is being deposited at virtually her back door.

(5) It was unnerving enough for her to learn that Richard LaBarbera (DIN 81A2806) (the "Murderer of Paula") has been granted release from prison with a target date of July 8, 2019. Mrs. Bohovesky is now terrified to learn that that Murderer of Paula has been assigned a Parole Officer based in Peekskill, New York----- less than 30 miles and 45 minutes from her home.

(6) Clearly, that means the Murderer of Paula will be living in close proximity to that Peekskill Parole Office and in close proximity to Mrs. Bohovesky, who will turn 87 this month of July 2019. Mrs. Bohovesky is in frail health and had a cardiac procedure days before her Victims Impact Statement in April 2019.

(7) Your Deponent, who was managing editor of The Journal-News when Paula was murdered, has sat in on several of those visits to DOCCS in Manhattan and has heard Lois recount those fears over and over. He has also sat with her on nearly two dozen days when Mrs. Bohovesky awaited a Parole Board Decision and has repeatedly seen the relief when one of Paula's killers was again denied parole.

This week I heard the terror in her voice when she read aloud the letter informing her that the Murderer of Paula will be so close – too close – to her home.

(8) The last thing Mrs. Bohovesky needs heaped on her is the potential that she will one day bump into Paula's Murderer in the local supermarket or worse, be confronted by Paula's killer at her back door in an uncontrollable drunken state like the night he took her Paula's life and the Bohovesky Family future.

THE FEAR OF THE MURDERER RETURNING

(9) Mrs. Bohovesky lives in the same home where 16-year-old Paula Bohovesky grew up and has been loved, remembered and revered every day since Oct. 28, 1980.

(10) That's when Paula's killer – who inexplicably was on Parole for drug offenses – set upon Paula, a Pearl River High School honor student and talented artist, actress and musician. Paula was in the safest possible place – blocks from home in Pearl River---the "Town of Friendly People" – at 7 p.m., walking home from her new job at the local library.

(11). The Murderer of Paula and his Co-Defendant who had been drinking together all day at a bar diagonally across the intersection, spotted Paula and followed her up North Main Street toward Hunt Avenue, where she lived.

(12). Before Paula got there, the Co-Defendant, according to police and the medical examiner, caught up with her and smashed her skull with a chunk of

concrete. The Co-Defendant then dragged Paula up the driveway of a vacant home, beat her and attempted a sex act. When the Co-Defendant was finished, Paula's Murderer joined the attack on Paula. Paula's killer too, attempted a sex act and when Paula showed signs of life, police say, Paula's Murderer snuffed that out, stabbing Paula repeatedly.

(13) The bottom line remains. Paula's innocent young life filled with potential to accomplish any dream she might have had was brutally ended when she was left with her clothing in disarray in a pool of her own blood. The Co-Defendant disappeared to Arkansas, where he was located days later and returned to Rockland.

(14) Paula's killer was not done. He asked a friend to dispose of a knife and falsely implicated yet a third individual, ultimately resulting in his conviction for hindering prosecution. Since Paula's killer and the Co-Defendant went to prison, Mrs. Bohovesky has lived in a world of horrible hurt and conflict:

- She tries on a daily basis to dwell on the 16 years she had with Paula, but mourns the loss of the woman and mother Paula would have become.
- She has dreaded the day of their release, a possible confrontation or that one might kill again, rendering the penalty paid for Paula's death meaningless.

Those fears have been a focus of Mrs. Bohovesky's Victim Impact Statements and numerous public interviews before and since her daughter's killers became eligible for Parole in 2005.

PETITIONER'S FEARS ARE THE COMMUNITY'S CONCERNS

(15). The Pearl River and Rockland County communities stand with Mrs. Bohovesky and her son, Peter. Thousands signed petitions or wrote personal letters to the Parole Board urging that two individuals who could commit such vile and heinous acts be kept caged until their dying days.

(16) Through the urging of the not-for-profit Petition for Paula, the petition has grown to tens of thousands; hundreds have called the Governor's office; hundreds more – many of them Paula's friends and schoolmates – recently sent a petition to the Parole Board and also took part in an All for Paula "Say Something" vigil in the hamlet that will never forget the talented, friendly soul who was stolen from them. It is not confirmed that the Parole Board reviewed all those submissions.

(17) Like Mrs. Bohovesky, whose husband died several years after Paula's murder and whose son lives and works in China, Paula's community mourns the loss of a friend who would now be in the prime of her career and motherhood – perhaps of her own 16-year-old daughter, full of promise, compassion and ambition.

(18) The community through all its actions since 1980 has attempted to alleviate Mrs. Bohovesky's other great fear: That one day Paula would be

forgotten, thereby robbing her of her past as well as her future and Paula's Murderer would be free to return to the scene of her murder near Mrs. Bohovesky.

(19) Mrs. Bohovesky's fears regarding freedom for Paula's killer are largely out of the public's hands except to plead that any parole for Paula's killer be to a place and from a Parole Office far from Pearl River, certainly much farther than Peekskill, just 28 miles and 45 minutes away.

(20) Those fears are fanned by the knowledge that Paula's Killer was on parole at the time of Paula's murder and his murderous rage overwhelmed any fear of returning to prison. Paula's killer remains unwilling to accept personal responsibility for this unspeakable crime.

(21) In Paula's killer's unsuccessful appearances before Parole Board panels in 2005, 2007, 2009, 2011, 2013, 2014, 20015 and 2017, he repeatedly changed his account of where he was when he watched his Co-Defendant attack Paula. One year Paula's killer said he was close enough to see that Paula was still alive and another he said he never left the center of Pearl River.

(22) With that history of fabricating fantasy, one can only wonder what magical tale of remorse and enlightenment Paula's killer sold to this year's Parole Board Panel of three members who have never before been exposed to him or the facts of Paula's brutal death at his hands.

(23) Paula's killer, assuming he will not stay in Prison or return to Prison before his release expected on or about July 8, 2019 (having been granted his release), must have only one option of where to live and work – far, far from Peekskill and farther from Pearl River, Lois Bohovesky and the people who love and protect her and cherish her daughter's memory.

WHEREFORE, your Deponent respectfully requests that the Application of the Petitioner be granted.

ROBERT BAIRD

Sworn to before me on this
1st day of July 2019

Notary Public, State of New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
LOIS BOHOVESKY, individually and as the next best
Friend of the Deceased PAULA BOHOVESKY

Petitioner-Plaintiff,

-against-

AFFIDAVIT
Index No.

THE COMMUNITY SUPERVISION PROGRAM
SERVICES in Peekskill for the Department of Corrections
and THE NEW YORK STATE PAROLE
BOARD,

Respondents-Defendants.

-----X

JOHN ALLEN MURPHY being duly sworn, deposes and states
under the penalty of perjury as follows.

1. Your Deponent is the 84 year old father of a classmate of the
Deceased Paula Bohovesky ("Paula") and a son who was a friend of Paula in their
performing arts/stage world. I know the Bohovesky Family for decades.

(2) This Affidavit is made upon personal knowledge.

(3) My connection to Paula's murder began the morning her body was
discovered when I encountered the yellow-taped crime scene on my way from my
home in Pearl River to work.

(4) My supportive relationship with Paula's Mother Lois deepened when Paula's killers became eligible for Parole and I had a leadership role in helping organizing petition efforts to the Parole Board. It continued to grow after her son, her only other child, moved far way. A few of us tried to fill in the empty places in her life without intruding in her private life.

(5) Lois's stoic strength was inspiring to everyone around her, but it became seriously challenged as her support lessened and she grew older and the chances of the killers being granted parole heightened. While Lois may have sustained her grace and dignity, those of us close to her could clearly see growing signs of fear, anxiety and a new level of anguish she tries not to show. I am speaking of an unusual lady, a very kind lady, an inspiring lady, with profoundly enlightened thoughts.

(6) But I see a new chilling threat to her serenity that never really took hold until the release of one of Paula's killers, Richard LaBarbera ("Paula's killer") was imminent.

(7) My empathy stems in part from an understanding of aging as both Lois and I have moved into our eighties. We are not as strong in everyday struggles as we once were and are aware of our mortal destiny.

(8) I can confidently declare, not only from her own words, but in many other ways, she is succumbing to her very worst fears which is Paula's

killer being released and returning to Lois's home and community in Pearl River. 1
will also intuitively suggest that her fear grows daily and could result in serious
harm to her body and mind.

(9) Her life after Paula's murder was a nightmare that she had to fight
off every hour of every day. If Paula's killer is not kept far away from Lois, our
New York State will be acting without compassion, devoid of sympathy and a
fundamental misunderstanding of what justice requires and what Paula's killer
should do by staying far away from Lois and her community if truly remorseful.

WHEREFORE, your Deponent respectfully requests that this Court
grant the relief sought by the Petitioner.

JOHN ALLEN MURPHY

Sworn to before me on this
1st day of July 2019

Notary Public, State of New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

-----X
LOIS BOHOVESKY, individually and as the next best
Friend of the Deceased PAULA BOHOVESKY

Petitioner-Plaintiff,

-against-

AFFIRMATION
Index No.

THE COMMUNITY SUPERVISION PROGRAM
SERVICES in Peekskill for the Department of Corrections
and THE NEW YORK STATE PAROLE
BOARD,

Respondents-Defendants.

-----X

DENNIS E. A. LYNCH, being duly admitted to practice law in the State
of New York respectfully affirms under the penalty of perjury as follows:

(1) Your Affiant is Of Counsel to Blanchard & Wilson, Esqs of White
Plains, New York along with my other *Pro Bono Publico* Attorney, John
McGowan of Bleakley Platt & Schmidt, of White Plains, New York for the
Petitioner.

(2) Just last week your Affiant was contacted by the Petitioner, Lois
Bohovesky ("Lois") who requested legal assistance. Both your Affiant and
Attorney McGowan immediately agreed to do so since this is a matter of grave
injustice if the killer of Lois's daughter Paula Bohovesky ("Paula") is released
from Prison and allowed to report to or reside near the Respondent-Defendant

Peekskill, New York Parole Community Supervision Office ("Peekskill Office")---
--so close to Lois.

(3) Immediately upon being requested to represent Lois who is most concerned about the release of Richard LaBarbera ("Paula's killer") and potential interaction with him, I was informed that Paula's killer would report to a Peekskill Office. I immediately contacted the Peekskill Office and confirmed that Paula's killer had a Parole Office there to report to. Multiple times I left detailed telephone messages to that Parole Office inquiring about the details of where Paula's killer would reside and Lois's Family other concerns. I never received any response and the release from Prison for Paula's killer is July 8, 2019.

(4) Since the Peekskill Office is only one county away from where Lois resides and I know that the Parole Board's Release Decision does not set limits on Paula's killer residing near her Family. I ask this Court to direct that the Defendants-Respondents prohibit Paula's killer from residing anywhere within five (5) counties from Lois for the first five years of his Parole.

(5) This five county and five year restriction would be "Paula's Rule" for Parole Release since otherwise would be a manifest injustice and a clear abuse of discretion by the Defendants-Respondents. Moreover, if Paula's killer has "shown remorse" as the Parole Board Record indicates, he should consent to this relief.

WHEREFORE, your Affiant respectfully requests the relief be granted.

DENNIS E.A. LYNCH

Affirmed on this 30 day of June 2019

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ROCKLAND

-----X
LOIS BOHOVESKY, individually and as the next best
Friend of the Deceased PAULA BOHOVESKY

Petitioner-Plaintiff,

PETITION-COMPLAINT

-against-

Index No.

THE COMMUNITY SUPERVISION PROGRAM
UNIT in Peekskill for the Department of Corrections
and THE NEW YORK STATE PAROLE
BOARD,

Respondents-Defendants.

-----X

Petitioner-Plaintiff Lois Bohovesky by and through her attorneys, as and for her Petition-Complaint against the above-captioned Respondents-Defendants, alleges upon information and belief as follows:

PRELIMINARY STATEMENT

1. This Litigation is filed because the families of murdered victims should not be subject to or have to endure a convicted murderer living or traveling nearby them when the murderer is placed on parole after being released from a term of imprisonment. This Litigation is also filed to have a proper review of all the Respondents-Defendants actions herein.

2. Lois Bohovesky ("Lois" or "Mrs. Bohovesky") is the mother of Paula Bohovesky ("Paula"), a 16-year old high school honor student who was brutally assaulted and murdered on October 28, 1980, by Richard LaBarbera ("Paula's killer") and Robert McCain ("Co-Defendant") (collectively, the "Murderers") as she made her way home from her after-school job at the Pearl River Public Library. The Murderers targeted her, followed her, beat her, attempted to sexually assault her, and repeatedly stabbed her, causing her death. The impact of this horrific

and terrible crime is still palpable nearly 40 years later in the quiet, bucolic hamlet of Pearl River, New York, where Paula's mother, Lois, still resides to this day.

3. The family members who suffer such a devastating and unspeakable loss, like Mrs. Bohovesky endured when her beautiful 16-year old child was so tragically taken from her, should not be made to suffer further when those who have been convicted of committing such acts are released from their term of imprisonment and permitted to live near the victims' families.

4. By decision of the Respondent-Defendant, the New York State Parole Board, Murderer LaBarbera ("Paula's killer") was granted parole on June 13, 2019, and is due to be released from his term of imprisonment to parole on July 8, 2019. Upon information and belief, Respondent-Defendant The Community Supervision Unit in Peekskill will supervise LaBarbera during his term of parole.

5. Peekskill, New York located in Westchester County, which is adjacent to Rockland County, is merely 30 miles from Pearl River, New York where Paula was murdered and where Lois resides.

6. This litigation is filed because victims of murderers and the victims' families should be accorded the same respect and rights as those who have been convicted of murder.

JURISDICTION AND VENUE

7. Jurisdiction of this Court is based upon the New York State Constitution.

8. This action is brought pursuant to the statutory powers of the Supreme Court to decide matters within its jurisdiction.

9. This is a hybrid proceeding seeking relief pursuant to Article 78 of the Civil Practice Law and Rules ("CPLR").

10. Additionally, and alternatively, declaratory relief is also authorized pursuant to CPLR Section 3001.

11. Venue is proper pursuant to CPLR § 506(b) as the body taking the action herein referenced, the Respondents-Defendants, have a place of business within the County in which this litigation is brought and the Peekskill Office where Paula's killer is to be supervised is in Westchester County, New York.

12. This litigation is filed by the attorneys for the Petitioner-Plaintiff on a *pro bono publico* basis.

13. This litigation is filed shortly after Paula's killer's release date was made public.

PARTIES

14. At all times relevant herein the Petitioner-Plaintiff Mrs. Bohovesky is murdered victim Paula's mother and a resident of Pearl River, a hamlet located in the Town of Orangetown, County of Rockland, State of New York, where the murder occurred.

15. At all times relevant herein the Respondent-Defendant New York State Parole Board (the "Board") is a duly organized municipal body in the State of New York acting pursuant to law and within the Respondent-Defendant New York State Department of Corrections and Community Supervision ("DOCCS").

16. At all times relevant herein, the Board has twelve (12) members appointed to serve as Board Members and Commissioners pursuant to New York State law.

17. At all times relevant, the Board has an office for the conduct of business at 1134 New Scotland Avenue, City of Albany, County of Albany, State of New York and DOCCS has an Office to supervise Paula's killer at 14 Bank Street, Peekskill, New York 10566.

18. At all times relevant herein, the Board reviewed the application for parole by Paula's killer with a Department Identification Number 81A2806.

19. Respondent-Defendant the Community Supervision Unit in Peekskill (the "Peekskill Office") is an office of the Parole Division of DOCCS located at 14 Bank Street, City of Peekskill, County of Westchester, State of New York.

20. The Murderers were tried jointly and convicted of murder in the second degree on June 6, 1981, and thereafter sentenced to an indeterminate sentence of 25 years to life for the brutal murder of Paula. Paula's killer was one of two murderers so convicted.

21. Paula's mother, Mrs. Bohovesky, who turns 87 years old this month, has continued to reside in Pearl River since her daughter's murder and has standing to bring this litigation.

BACKGROUND OF LITIGATION

22. On the morning of October 29, 1980, the body of 16-year old Paul was discovered lying face down near a pool of blood with her pants pulled down around her ankles. Paula's injuries included five stab wounds on her back, blood coming out of the nose, a swollen area on her forehead, and numerous bruises on her neck, face, and calf area of one of the legs. *People v. McCain*, 134 A.D.2d 287, 288 (2d Dep't 1987).

23. After the discovery of Paula's body, both Murderers were questioned by the police and made incriminating statements. The Co-Defendant confessed to following Paula on North Main Street in Pearl River, striking her in the head with a rock approximately six inches in diameter, and beating her about the face and throat areas to render her unconscious. *Id.*

24. Paula's killer made a series of conflicting statements to the police and had different versions of his involvement from admitting he stabbed Paula to claiming he fled, but

returned to the scene later and found the body of the victim lying face down near a large pool of blood with her jeans and her underwear pulled down around her ankles.

25. During the joint trial, Rockland County Chief Medical Examiner Dr. Frederick T. Zugibe, testified concerning Paula's injuries and cause of death: he opined that head and neck wounds were inflicted prior to the stab wounds; he opined with a reasonable degree of medical certainty that Paula would have died within a period of six to twelve hours as a result of the neck compression and the contusion to the head and resulting edema of the brain even if the stab wounds had not been sustained. *Id.*

26. In addition, additional medical and forensic evidence revealed the presence of Paula's blood on the Co-Defendant's belt. *Id.*

27. On June 6, 1981, a Rockland County jury convicted both of Murder in the Second Degree. Upon the rendering of the verdict by the jury, neither Murderer displayed any remorse or emotion. See New York Times, 2 *Guilty in Death of Pearl River Girl*, June 6, 1981 www.nytimes.com (last accessed June 29, 2019).

28. Both Murderers have applied and been denied parole by the Parole Board numerous times since first becoming eligible in or around 2005. A not-for-profit corporation, Petition for Paula, Inc. ("Petition for Paul"), was formed in New York in 2009 with the mission to keep Paula's memory alive and to gather signatures of those opposed to the release of the Murderers. Since the creation of Petition for Paula, approximately 35,000 signatures have been collected so that the Murderers remain incarcerated.

29. Within the past few weeks, Lois and others have learned that while the Parole Board did not release on Parole the Co-Defendant, the Parole Board released Paula's killer

without any restrictions where Paula's killer could reside—so Paula's killer could reside right nearby Lois.

30. Since the Parole Board's unfathomable decision to release Paula's killer, there has been substantial community outrage and fierce opposition. A candlelight vigil was held on the evening of June 15, 2019, where nearly 2,000 protesters gathered to walk in silence along the same path Paula walked on the night she was murdered. Petition for Paula has also continued to gather thousands of online signatures and countless have expressed their support of the efforts to challenge and fight the decision to release Paula's killer, including hundreds of letters and phone calls to the Parole Board from individuals across all walks of life united in their disgust of this decision to grant parole to Paula's killer.

31. In addition to the community support for Paula, there has been significant national media coverage of the Parole Board's decision, including FoxNews and People Magazine.

32. Through all of this, Mrs. Bohovesky has remained strong and committed to keeping the memory of her deceased daughter alive and has handled her grief and sorrow with tremendous grace and dignity.

33. Among her fears, as set forth further in the annexed Affidavits in Support of John A. Murphy and Robert Baird, dated July 1, 2019, is that one day Paula's killer would be released from custody. Not only was the decision to release Paula's killer wrongly and unlawfully made, the supervision of his parole from Peekskill, a mere 30-mile drive from where Lois lives, undoubtedly threatens Lois's safety, both of mind and body. Without some reasonable restrictions, there is nothing to prevent Paula's killer from returning to Lois's residence in Pearl River, the scene of his crime, where whatever peace, serenity, or normalcy Lois has regained since 1980 will surely be lost.

AS AND FOR A FIRST CLAIM FOR RELIEF

34. Petitioner-Plaintiff repeats and realleges each and every allegation in paragraphs “1” through “33” as though set forth in full herein.

35. The Respondents-Defendants have the authority to implement “special conditions” on the terms of Paula’s killer parole and discharge plan.

36. New York Executive Law (“Executive Law”) § 259-c provides the following, in pertinent part:

have the power and duty of determining the conditions of release of the person who may be presumptively released, conditionally released or subject to a period of post-release supervision under an indeterminate or determinate sentence of imprisonment

Executive Law § 259-c(2) (McKinney’s 2019).

37. Further, New York Code, Rules, and Regulations (“NYCRR”) provides the following, in pertinent part:

A special condition may be imposed upon a releasee either prior or subsequent to release. The releasee shall be provided with a written copy of each special condition imposed. Each special condition may be imposed by a member or members of the Board of Parole, an authorized representative of the Division of Parole, or a parole officer.

9 NYCRR § 8003.3(McKinney’s 2019).

38. As set forth above, the Respondents-Defendants have the statutory authority to impose a “special condition” on Paula’s killer release, such as restricting him from travelling or residing within a designated area of where the crime occurred and where the victim’s family still resides. Instead, the Respondent-Defendants have decided to supervise Paula’s killer’s parole from Peekskill, New York located in the adjoining county and a mere 30 miles from Pearl River.

39. The Panel of the Parole Board could have, but did not, require Paula's killer to resident a safe distance away from Lois which would be five (5) counties away for the first five years of his release from prison.

40. Accordingly, this Court is respectfully requested to determine, declare and otherwise hold that the actions of Respondents-Defendants in deciding to supervise Paula's killer parole from the adjoining county to where he committed this crime and where the victim's family still resides is an improper action that should be enjoined as it is arbitrary and capricious and an abuse of discretion.

AS AND FOR A SECOND CLAIM FOR RELIEF

41. Petitioner-Plaintiff repeats and realleges each and every allegation in paragraphs "1" through "40" as though set forth in full herein.

42. The Respondents-Defendants had before it a record of the changing version of the murder of Paula by Paula's killer.

43. In many of his appearances, Paula's killer spoke or was questioned about his role and says he merely watched. But, that "story" changed over the years:

2005: He got close enough to see Paula's clothes in disarray

2007: He got close enough to think Paula was still alive and that if he had acted differently, she might not have died.

2009: The closest he got to where Paula died was 10-15 yards.

2011: There was no discussion of where he was and what he saw

2014: He says he never went anywhere near where Paula died, staying near the Police Booth in the heart of Pearl River, two long blocks from the scene of Paula's death.

2015: When asked, "So, is it your position that you were present at the time that the young lady was attacked but that the attack was committed by Mr. McCain and not you, is that your position?," his replay was: "Basically, yes...."

2017: When asked, "Did you have any physical contact with (Paula) in the instant offense?" he responded "No, sir."

44. The action of Respondents-Defendants in granting Parole to Paula's killer was arbitrary and capricious, a violation of lawful procedure and an abuse of discretion as the

changing versions of involvement by Paula's killer where evidence found that he had repeatedly stabbed Paula after the Co-Defendant hit her in the head and caused her to violently fall to the ground confirms no evidence of "sincere remorse" as the Respondents-Defendants so found.

45. Accordingly, this Court is respectfully requested to determine, declare and otherwise hold that the actions of the Respondents-Defendants violate the applicable law and is otherwise improper action that should be enjoined as well as being so declared illegal.

AS AND FOR A THIRD CLAIM FOR RELIEF

46. Petitioner-Plaintiff repeats and realleges each and every allegation in paragraphs "1" through "45" as though set forth in full herein.

47. The actions of Respondents-Defendants in granting Parole to Paula's killer was arbitrary and capricious and in violation of lawful procedure and must be declared null and void.

48. The Respondents-Defendants have a procedure under the subsections of 9 NYCRR 8002 to interview and grant or deny an inmate parole such as Paula's killer.

49. The decision of whether to grant an inmate parole requires the consideration and determination of the entire Board, pursuant to the subsections of 9 NYCRR 8002.2.

50. The Board failed to fulfill its statutory and regulatory obligations that govern a determination to grant parole and its Decision is fatally flawed as a matter of law and must be declared null and void as to Paula's killer.

51. The Board is required to consider "risk and needs principles" in "making a release determination" pursuant to 9 NYCRR 8002.2(a).

52. The Board failed to properly and fully consider the risk and needs principles in making its release determination for Paula's killer and the Decision therefore must be declared null and void.

53. The Board is required to “consider... factors in making a release determination” pursuant to 9 NYCRR 8002.2(d).

54. The Board failed to consider the relevant factors in making its release determination for Paula’s killer in its Decision and the Decision must be declared null and void as a matter of law.

55. The decision of whether to release an inmate such as Paula’s killer following its interview and deliberations is reserved to the Board pursuant to 9 NYCRR 8002.3(a).

56. The Board improperly and unlawfully delegated its statutory and regulatory obligations underlying this Decision to release Paula’s killer and the Decision must be declared null and void as a matter of law.

57. The Respondents-Defendants acted improperly and unlawfully in having the Panel, and not the Board, determine the Decision to release Paula’s killer.

AS AND FOR A FOURTH CLAIM FOR RELIEF

58. Petitioner-Plaintiff repeats and realleges each and every allegation in paragraphs “1” through “57” as though set forth in full herein.

59. Pursuant to the Administrative Procedure Act and other provisions of New York State law, the Respondents-Defendants are required to timely release information about actions taken, including the actions taken by the Respondents-Defendants in granting Paula’s killer Parole.

60. The Petitioner through her representatives and otherwise sought to obtain a transcript of the Parole Board hearing leading to the release of Paula’ killer in a timely manner so as to undertake proper judicial review.

61. The practice and policy of the Respondents-Defendants is not to provide critical information so as to provide meaningful judicial review and to allow a redress of grievances by the Petitioner.

62. As a result of the foregoing, the actions of the Respondents-Defendants should be declared arbitrary and capricious, an abuse of discretion and a violation of lawful procedure.

63. No other application has been made for the relief requested herein.

RELIEF SOUGHT

WHEREFORE, the Petitioner-Plaintiff demand Judgment against the Respondents-Defendants as follows; to declare and determine that the Decision regarding Paula's killer was arbitrary and capricious, in violation of lawful procedure, and abuse of discretion and action that borders on being an impropriety; that the failure to publicly and promptly post the Transcript of the Board hearing regarding Paula's killer was arbitrary and capricious, in violation of lawful procedure, and abuse of discretion and action that border on being an impropriety; that the Board failed to issue its Decision in accordance with its statutory and regulatory obligations when it unlawfully delegated its decision making authority to the Panel; and that the Board be preliminarily and permanently enjoined from allowing any determinations or decision on a Parole Application without full disclosure on the public record of any potential conflicts of interests of the Respondents-Defendants; remanding the application for Parole of Paula's killer back to the entire Board whose Members have the full transcripts of all prior Parole Board hearings for Paula's killer; by having that newly formed Board absent of conflicts of interest or appearance of impropriety provide an unadulterated recommendation to the Board so that the Board may lawfully exercise its statutory and regulatory obligations and issue a non-defective decision; ordering that Paula's killer be required to live and report to a parole office no less than

five counties away from Rockland for the first five years following release; and granting such other, further and different relief as to this Court seems just, proper and equitable under the circumstances herein including but not limited to joining any interested party or person to this proceeding..

Dated: July 1, 2019
White Plains, New York

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